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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,278	11/28/2001	David Guedalia	DLGNM-026XX	2332
78637 7590 07/19/2011 WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			EXAMINER PHAN, JOSEPH T	
			ART UNIT 2614	PAPER NUMBER
			MAIL DATE 07/19/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/996,278	Applicant(s) GUEDALIA ET AL.	
	Examiner JOSEPH T. PHAN	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/08/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8,10,11,15,16,18,20,21,25-27,30,31,35-37 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) 21,25-27,30,31,35-37,40 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8,10,11,15,16,18,20 and 41-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) See Continuation Sheet are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1,5,6,8,10,11,15,16,18,20,21,25-27,30,31,35-37 and 40-45.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims (1,5,6,8,10,11,15,16,18,20, and 41-44) and Withdraw of claims (21,25-27,30-31,35-37,40 and 45) in the reply filed on 09/08/2010 is acknowledged.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20, and 41-44 have been considered but are not persuasive and new grounds of rejection in view of 112 issues.

Applicant contends that the prior art, Frerichs does not teach 'determining if said audio stream is delayed or slowed down' and for support shows Fig.5B which only discloses one song data embodiment. However, Frerichs discloses multiple embodiments and examples that determines if said audio stream is delayed or slowed down. Including col.7 lines 26-65, Frerichs further discloses that his 'streaming audio includes first audio data and second audio data' (col.9 lines 2-11) which includes both audio data . He teaches here that the audio is 'delayed' because 'there is delay/latency in the network'. As the applicant incorrectly presumes the flag is always at a certain time, Frerichs clearly shows the flag or flags are set at different spots and times due to the latency of the audio stream(col.7 lines 28-35 and col.7 lines 60-66), wherein T1 and T2 are different due to latency/delay.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1 and 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 11 line 9 recites "...audio stream rates, one or more locations in said audio stream" which is unclear and confusing as it is not known if this plural phrase is referring to the 'audio stream' in line 2 or 'storing at least portions of said audio stream' in line 3 or 'sampling portions of said audio stream' in line 7 and makes the claims indefinite.

Claims 1 and 11 lines 5-6 recites "measure a rate of playback of the contents" and "measure a rate of said audio stream" which is unclear and confusing as applicant's specification (page 5 para 0035) discloses and only teaches of 'monitoring'. The claims do not define or disclose 'measuring' and therefore 'measuring' will be interpreted as 'monitoring' in the action below.

Appropriate clarification and/or correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20, and 41-44 rejected under 35 U.S.C. 102(e) as being anticipated by Frerichs et al., Patent #6,684,249.

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Regarding claims 1 and 11, Frerichs teaches a system and method for audio streaming(Fig.1), the system and method comprising:

an audio streaming server providing an audio stream(Fig.1, col.4 lines 1-18, col.6 lines 20-22), a client including a buffer storing at least portions of said audio stream received from said audio streaming server(Fig.2, col.7 lines 26-40, and col.13 lines 5-61), a buffer status sensor operative to measure a rate of playback of the contents of said buffer, and to measure a rate of said audio stream to determine if said audio stream is delayed or slowed down(col.7 lines 25-35), said buffer status sensor including an audio sampler for sampling portions of said audio stream(col.7 lines 1-5, 30-50, and lines 62-67), said buffer status sensor identifying, as a function of the measured playback audio stream rates, one or more locations in said audio stream where an audio segment could be inserted when said audio stream is delayed or slowed down (col.6 lines 23-30, col.7 lines 1-50, and col.10 lines 20-56); and

a client audio output inserter operative in response to an output from said buffer status sensor for providing a modified audio stream output including pre-recorded audio segments which were not received from said audio streaming server(col.6 lines 46-51), inserted at one or more of said audio stream locations identified by said buffer status sensor(col.6 lines 31-42, col.7 lines 41-52, and col.10 lines 20-56).

Regarding claims 5 and 15, Frerichs teaches a system and method according to claims 2 and 12 and wherein said inserted audio segments comprise advertisements (col.13 lines 48-64 and col.14 lines 54-67).

Regarding claims 6 and 16, Frerichs teaches a system and method according to claims 1 and 11 and wherein said client comprises a telephone(col.11 lines 10-12).

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Regarding claims 8 and 18, Frerichs teaches a system and method according to claims 1 and 11 wherein said client comprises a telephone and an IVR(col.11 lines 6-21).

Regarding claims 10 and 20, Frerichs teaches a system and method according to claims 1 and 11 and wherein said client provides a real time output(col.7 lines 51-58).

Regarding claims 41-44, Frerichs teaches a system and method according to claims 1 and 11 and further providing selected audible cues, background music and background noise(col.2 lines 34-37)client provides a real time output(col.7 lines 51-58).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH T. PHAN whose telephone number is (571)272-7544. The examiner can normally be reached on Monday-Thursday 9am-7pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph T Phan/
Primary Examiner, Art Unit 2614